Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1976
No. 76-579

THEODORE G. SPENCER, et al.,

Appellants

vs.

REDEVELOPMENT AUTHORITY OF THE CITY OF NANTICOKE,

Appellee

MOTION TO DISMISS OR AFFIRM APPEAL FROM STATE COURT FOR WANT OF SUBSTANTIAL FEDERAL QUESTION

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November 17, 1976

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THEODORE G. SPENCER, et al.,
Appellants
v.
REDEVELOPMENT AUTHORITY OF THE CITY OF NANTICOKE,
Appellee

MOTION TO DISMISS OR AFFIRM APPEAL FROM STATE COURT FOR WANT OF SUBSTANTIAL FEDERAL QUESTION.

The Appellee moves the Court to dismiss the Appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of Pennsylvania on the ground that it does not present a substantial federal question and that it is manifest that the questions on which the Decision of the case depends are so unsubstantial as not to need further argument.

THE NATURE OF THE CASE.

The Appellant challenges the constitutionality of certain provisions of the Eminent Domain Code of the Commonwealth of Pennsylvania as it has been applied to them in a disaster urban renewal project. The Appellants, however, have not raised a substantial, federal question. Further, it is manifest that the questions on which the Decision of the case depends are so unsubstantial as not to need further argument. The Hurricane Agnes Disaster was a unique phenomenon. (J.S. 41 and 42). As such the issues raised herein are limited in scope and impact.

ARGUMENT

I. DOES SECTION 1-602 OF THE PENNSYLVANIA EMINENT DOMAIN CODE VIOLATE THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AS APPLIED TO APPELLANTS?

Appellants' properties were damaged in the flood. After the flood, Appellants restored their properties to usable condition. The Redevelopment Authority of the City of Nanticoke filed a Declaration of Taking pursuant to the Eminent Domain Code. The Eminent Domain Code, 26 P.S. §1-602 provides that a condemnee must be paid the fair market value of his property as of the date of taking. Appellants contend that because they are not being compensated for the damage sustained by them in the flood, they are being denied their Fifth Amendment right to just compensation. Appellants' contention on this issue is blatently frivolous. They are being paid just compensation. They have no constitutional right to be paid for their flood losses.

II. DOES SECTION 1-602 OF THE PENNSYLVANIA EMINENT DOMAIN CODE AS IT IS BEING APPLIED TO APPELLANTS DEPRIVE THEM OF THE EQUAL PROTECTION OF THE LAWS?

After the flood and before any Declarations of Taking were filed, some of the flood victims repaired the flood

damage that was done to their properties. The flood victims who did repair their properties received Small Business Administration disaster loans. These loans carry interest at the rate of one (1%) per cent and the first Five Thousand ($5,000) Dollars thereof was forgiven. Whether or not an individual availed himself of the Small Business Administration disaster loans and repaired his property was a purely voluntary act on the part of the individual. The Pennsylvania Eminent Domain Code, 26 P.S. §1-602, provides that the condemnee is entitled to receive the fair market value of his property on the date of taking as unaffected by the flood. This is commonly referred to as pre-flood value by those unsophisticated in the law. It is not really pre-flood value. Rather, it is the fair market value on the date of taking as unaffected by the flood damage. Appellants contend that this denies to them the equal protection of the laws. Appellants fail to appreciate the fact that those individuals who have voluntarily undertaken to avail themselves of the Small Business Administration disaster loans with the one per cent interest and the $5,000 forgiveness and to voluntarily repair their property with those loans, are in a different class or category from those who have not done so. The law is well settled that the Constitution does not require equal protection of law to all persons under all circumstances. Economic and social legislation does not violate equal protection provided the law be reasonable, not arbitrary and bears a rational relationship to a permissible state objective. Village of Belle Terre

v. Boraas, 416 U.S. 1 (1974).

III. DOES SECTION 1-601A (b) (3) CONSTITUTE A DENIAL OF THE FIFTH AMENDMENT RIGHT TO JUST COMPENSATION AS THAT SECTION HAS BEEN APPLIED TO THE APPELLANTS?

The Eminent Domain Code of the Commonwealth of Pennsylvania, 26 P.S. §1-601A (b) (3) provides for payment of an amount not to exceed Ten Thousand ($10,000) Dollars as business dislocation damages. The Appellants contend that they have lost an amount in excess of $10,000 as a result of the dislocation of their business. The cost of relocation does not enlarge one's constitutional entitlement to just compensation. See Sgarlat Estate v. Commonwealth, 398 Pa. 406; 158 A.2d, 541, Cert. denied; 364 U.S. 817 (1960).

IV. IS SECTION 1-407 (a) OF THE PENNSYLVANIA EMINENT DOMAIN CODE REPUGNANT TO SECTION 210 OF THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 AS THE PENNSYLVANIA EMINENT DOMAIN CODE HAS BEEN APPLIED TO THE APPELLANTS?

The Appellants contend that the Pennsylvania Eminent Domain Code, 26 P.S. §1-407 (a) is repugnant to §210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, January 2, 1971; 42 USC, §4630, in that it entitles the condemnor to possession of the Appellants' property without any requirement that the condemnor

provide relocation assistance to the Appellants. The Uniform Relocation Assistance and Real Property Acquisition Policies Act does not require the condemnor to provide relocation assistance until the Condemnor has acquired title to the property. The condemnor has not yet acquired title to the Appellants' property. The argument that §1-407 (a) of the Pennsylvania Eminent Domain Code is repugnant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act cannot allegedly be asserted since condemnation or sale is a prerequisite in the eligibility for relocation benefits. See Condemnation of 4150-52 East Thompson Street, 64 D & C, 2d, 306, 309, 310 (1973).

CONCLUSION

WHEREFORE, the Appellee respectfully submits that the questions upon which this case depends are so unsubstantial as not to need further argument and Appellee respectfully moves the Court to dismiss this Appeal or, in the alternative, to affirm the judgment entered in the case by the Supreme Court of the Commonwealth of Pennsylvania.

Respectfully submitted,

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Dated: November 17, 1976